



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consolidated Freightways, Inc. - Rate tenders
issued by a division of the carrier
File: B-226246
Date: March 25, 1988

DIGEST

A carrier argues that the General Services Administration's (GSA) audit action is improper where GSA applied rates from a rate tender issued by a specific division of the carrier to shipments tendered to the carrier but not to the specific division. GSA's audit action is sustained since the tender did not show a clear and unambiguous intent to restrict its application only to shipments tendered to the specific division. Also, the carrier's argument that the tender does not apply because it was actually issued by a separate corporation with the same name as the carrier's operating division is not accepted. The tender specifically states it was issued by the carrier's division operating under the carrier's Interstate Commerce Commission authority.

DECISION

Consolidated Freightways, Inc., requests review of deduction action taken by the General Services Administration (GSA) on the carrier's transportation bills. We conclude that the carrier has not shown that the tender basis for GSA's deduction action is invalid.

BACKGROUND

This request raises the issue of whether rate tenders issued by CF Arrowhead Services (Arrowhead), a division of Consolidated Freightways, are applicable to transactions where government shippers called Consolidated for service, the Government Bills of Lading (GBL) were issued to Consolidated and Consolidated performed the services.

In its audit of Consolidated's bills GSA determined that the lower rates offered in Arrowhead's tenders were applicable to over 30 shipments transported by

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Consolidated.^{1/} Tender No. ICC 1372, which we understand is generally representative of the tenders in issue, identifies in blocks 1A and 1B, respectively, the "Issuing Carrier, Bureau, Agency, or Conference" as "CF Arrowhead Services, A Division of Consolidated Freightways Corporation of Delaware," and the carrier code as "CFAS." Tender 1372, effective July 18, 1983, offered reduced rates to the United States Government under 49 U.S.C. § 10761(a) for the transportation of Freight All Kinds from and to various points under the operating authority shown in Block 18, MC 042487, which is Consolidated's operating authority. Block 14 of the tender, which relates to routing, states:

"CF Arrowhead Services, A Division of Consolidated Freightways Corporation of Delaware (CFAS)
(609) 596-2233"

Block 17B, which pertains to governing publications, states, "Apply the applicable rules in ICC CFWY 106," which is a Consolidated rules tariff.

GSA and Consolidated agree that GBL M-9115658, issued October 21, 1983, is representative of the over 30 bills involved. The GBL shows that the shipment was received by an agent of Consolidated Freightways Corporation, CFWY, on October 31, 1983, and delivered to its destination by Consolidated.

GSA made an audit determination that tenders issued by Arrowhead as a division of Consolidated were applicable, noting that Consolidated and Arrowhead operated as one company under the same authority, ICC certificate MC 042487; therefore, when the government tendered the shipments to Consolidated the carrier had a duty to apply the rates in the tenders issued by Arrowhead. As a result, GSA computed the difference between the charges collected by Consolidated and those applicable on the basis of Arrowhead's tenders as overcharges, and when Consolidated failed to voluntarily refund, GSA collected the overcharges

^{1/} The record does not disclose the tariff basis for Consolidated's original charges.

by deducting the amounts from monies otherwise due the carrier.

Consolidated, however, disputes the factual premise for GSA's audit position that Arrowhead operated as a division of Consolidated under its operating authority. The carrier contends that Arrowhead is a separate company which, since April 18, 1983, has had its own operating authority, ICC certificate MC 164299. Therefore, Consolidated concludes, the tenders were restricted in application to shipments tendered to Arrowhead. The carrier further contends that the tenders were applicable only if the shipper called the telephone number listed in Block 14 of the tenders.

GSA concedes that there is a separate company, CF Arrowhead Services, Inc., that holds certificate MC 164299, but says that company is not the same as the Arrowhead operating division of Consolidated.

DISCUSSION

As to the status of Arrowhead, we note that the National Motor Freight Traffic Association Directory of Carrier Codes, ICC NMF 101-E, effective June 16, 1983, listed both Consolidated Freightways Corporation of Delaware and Consolidated Freightways Arrowhead Service (Division of Consolidated Freightways) operating under authority of ICC MC 042487. In addition it listed CF Arrowhead Services, Inc., operating under ICC MC 164299. The address of all three entities was shown as Menlo Park, California. Thus, it appears that there was both an Arrowhead Services which operated under Consolidated's operating authority and was a part of Consolidated, and the separate company, Arrowhead Services, Inc., holding certificate MC-164299.

The tenders state that they were issued by Arrowhead as a division of Consolidated under Consolidated's authority, MC 042487, and not under the separate authority, MC 164299, of Arrowhead, Inc., the separate corporation to which Consolidated refers. The record is not entirely clear as to whether Arrowhead was acting as Consolidated's tender-issuing agent and sales agent or Consolidated was acting as operations agent for Arrowhead, CFAS. However, we have held under similar circumstances that in the absence of a clear

and unambiguous showing that tender rates are restricted to shipments tendered to a particular agent via a specific telephone number, the rates issued by an apparent tender-issuing agent are applicable to shipments tendered to the carrier holding the operating authority shown on the tender. See Von Der Ahe Van Line, Inc., B-190610, June 13, 1978. This holding is based on the fundamental principle that tender ambiguities and doubts are resolved in favor of the shipper.

Here, Consolidated's operating certificate number appeared on the tenders; the tenders were governed expressly by its rules tariff, and the issuing entity, Arrowhead, was further identified as a "division of" Consolidated. As a party to the contracts of carriage Consolidated was obligated to perform the service; however, the operational details, such as which agent or division should perform, had no legal effect on the mutual obligations of the parties to the contracts of carriage, which included application of the lower tender rates. See ABF Freight System, Inc. (East Texas Motor Freight), B-221609, Feb. 28, 1986. Concerning the specific telephone number, the tenders do not make its use appear mandatory, that is, it does not appear as a condition of applicability. Rather, it was more of a suggestion or recommendation as a convenience to the shippers. See ABF Freight System, Inc., B-221646, Sept. 18, 1987.

In the circumstances described in this record we hold that the tenders issued by "CF Arrowhead Services, A Division of Consolidated Freightways Corporation of Delaware, " were applicable to the shipments tendered to Consolidated Freightways, Inc. Accordingly, we sustain GSA's actions.

for 
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of the United States